

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit : 3728
Examiner : Mickey Yu
Applicant : Julio Casanova
Appln. No. : 10/789,858
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For : MODULAR BATTERY PACKAGE

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICANT'S REPLY UNDER 37 C.F.R. § 1.193

This is in reply to Examiner's Answer dated as mailed October 25, 2007.

Items (1-5):

The Examiner has agreed that these items are acceptable as listed in the Appeal Brief.

Item (6): Grounds of Rejection to be Reviewed on Appeal

The Examiner has stated that Appellant's statement of ground of rejection is in error because claim 22 should have been listed as being rejected under 35 U.S.C. §103(a) as being unpatentable over PCT Publication No. WO 01/98170 to Casanova in view of U.S. Patent No. 3,743,084 to Douglas and/or U.S. Patent No. 6,253,920 to Källgren. According to the Examiner, such a rejection was not included in the Final Rejection because "the examiner made a typographical error which resulted in independent claim 22 missing from paragraph 4 of the Final Office Action." Page 3 of Examiner's Answer. Therefore, Appellant's statement of ground of rejection was correct in the Appeal Brief as claim 22 was not rejected over these references in the Final Rejection. Nevertheless, Appellant will address this new rejection in this Reply Brief.

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Item (7): Claims Appendix

The Examiner agreed that a correct copy of the appealed claims appears in the Appendix of the Appeal Brief.

Item (8): Evidence Relied Upon

The Examiner has correctly listed the references used to reject the claims in the present application.

Items (9 and 10) Reply to Examiner's Grounds of Rejection and Arguments:

The Applicant's Appeal Brief stands, and is incorporated herein in its entirety. The following comments are intended to directly reply to the Examiner's Answer. In the Examiner's Answer, the Examiner made responses to the arguments made in Applicant's Appeal Brief. These arguments will be addressed in the order presented in the Examiner's Answer.

A. Rejection of Claims 1-14, 19, 20, 22-34, 39 and 40 Under 35 U.S.C. §112, First Paragraph, as Failing to Comply with the Written Description Requirement

The Applicant's Appeal Brief stands, and the arguments relative to compliance with the written description requirement are incorporated herein in their entirety. According to the Examiner's Answer, even though the cover 14 of the present application is disclosed as covering all six sides of engaged modules, it is possible that something could only cover four sides of the engaged modules. However, Applicant submits that the written description requirement only applies to what is disclosed in the present application, not hypothetical examples set forth by the examiner. The only question that is relevant here is: is there at least one embodiment of the present invention as claimed in claims 1-14, 19, 20, 22-34, 39 and 40 that was in possession of the Applicant upon filing of the application? The answer to this question is clearly yes.

In paragraph [0027] of the present application, the present description clearly states that "[i]n the illustrated example, the cover 14 covers all six sides of the engaged modules 12."

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The engaged modules 12 in the illustrated example only have six sides. Therefore, the specification as filed clearly discloses a cover that covers all of the at least two modules such that “none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules.” Furthermore, while the Examiner has stated this issue on page 32 of the Examiner’s Answer as being that the Applicant has not disclosed “non-removal of the modules while in the cover,” such a feature is clearly disclosed in the application as filed. Accordingly, there is a written description for all of the claims as currently pending.

Applicant notes, as an aside, that element 14 is identified in the present application as a cover, not a “cardboard box” as set forth in the Examiner’s Answer.

B. Rejection of Claims 1-14, 19, 20, 22-34, 39 and 40 Under 35 U.S.C. §112, Second Paragraph, as Being Indefinite

The Applicant's Appeal Brief stands, and the arguments relative to the definiteness of the claims are incorporated herein in their entirety.

C. The Legal Standard for Rejecting a Claim as Being Obvious

The Examiner has not objected to the legal standard for rejecting a claim as being obvious as set forth in the Appeal Brief.

D. Rejection of Claims 1, 3, 4, 6-11, 13, 14, 20, 22-24, 26-31, 33, 34 and 40 under 35 U.S.C. §103(a) as Being Obvious Over PCT Publication No. WO 01/98170 to Casanova in view of U.S. Patent No. 3,743,084 to Douglas and/or U.S. Patent No. 6,253,920 to Källgren.

The Applicant's Appeal Brief stands, and the arguments relative to allowability of claims 1, 3, 4, 6-11, 13, 14, 20, 23, 24, 26-31, 33, 34 and 40 are incorporated herein in their entirety.

Furthermore, Applicant continues to contend that the Final Office Action has not set forth the proposed modification of the applied references necessary to arrive at the claimed

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subject matter as required by MPEP §706.02(j) as the Final Office Action only states what the three references are purported to include and does not state how these three references are combined. Namely, the Final Office Action does not state how the Douglas '048 patent is combined with the Casanova '017 publication, how the Källgren '920 patent is combined with the Casanova '017 publication, or how both the Douglas '048 patent and the Källgren '920 patent are combined with the Casanova '017 publication.

According to the Examiner's Answer, "if appellant had difficulty in understanding the proposed modification, appellant should have contacted the examiner for an interview after the first Non-Final Office Action" and that "judging from the responses, appellant did not appear to have difficulties in making his argument based upon the rejections." Page 15 of the Examiner's Answer. First, the present rejection using the above reference, was only made in a final office action. Therefore, Applicant could not have contacted the examiner for an interview "after the first Non-Final Office Action." Second, such deficiencies were brought to the Examiner's attention in a response to the Final Office Action, but such deficiencies were never addressed (the Examiner only replied with an Advisory Action that did not address any of the arguments made in the response to the Final Office Action). Third, the Examiner refused an interview after the Final Office Action. Therefore, the Final Office Action had an improper and confusing rejection and the Examiner refused to respond to a response after a final rejection and refused an interview with the Applicant. Applicant had no other option than to file an appeal in the present action. Nevertheless, Applicant submits that the Final Office Action and the Examiner's Answer is so deficient that a *prima facie* rejection of the claims has not been made.

1. Claim 1, 13, 14 and 20

Applicant submits that claim 1 is not obvious over the prior art of record. As stated in the Appeal Brief, Applicant submits that the Casanova '017 publication, even when combined with the other cited references to reject claim 1, does not allow for at least one pocket of a first one of at least two separate modules being located between a pair of pockets of the second one of at least two separate modules. It appear that, according to the Examiner's Answer, it is

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obvious to take the battery package of the Casanova '017 publication, spread the batteries 22 out such that they are further spaced from each other such that another battery of another package can be placed between the now spaced out batteries 22, add more material to cover the batteries 22 (as the blister container 30 would need to be enlarged to cover the separated batteries 22), and add another package to the first package in order to avoid bulkiness and to have a minimum amount of space. Applicant submits that spacing things out and adding more material (and thereby costs) does not avoid bulkiness or result in a minimum amount of space. Accordingly, Applicant submits that it is not obvious to combine any reference with the Casanova '017 publication as set forth in the Examiner's Answer to result in the presently claimed invention.

i. The Casanova '017 publication in view of the Douglas '084 patent

In regard to the rejection of the claims as being unpatentable over the Casanova '017 publication in view of the Douglas '084 patent, neither of these references include at least two separate modules. First, the Casanova '017 publication does not include at least two modules.

Second, the Douglas '084 patent includes holding units or assemblages 50 and 60 that are connected by a linking panel 42 and units 80 and 90 that are connected by linking panel 76.

Accordingly, the Douglas '084 patent does not include at least two separate modules.

Therefore, a combination of these two references will not include at least two separate modules that will easily separate upon removal of a cover from over the at least two separate modules.

The Examiner's Answer responds to this deficiency in the cited references by giving two definitions of the verb tense of the word "separate" and concluding that the definitions provide "the basic affirmation that the term 'separate' does not require two objects to be derived from two unconnected items." Page 17 of the Examiner's Answer. First, separate as used in the claims is used as an adjective. Therefore, a definition of the verb tense of separate from a dictionary is irrelevant. Second, as set forth in MPEP §2111, "claims must be 'given their broadest reasonable interpretation consistent with the specification.'" (emphasis added) (citing *Phillips v. AWH Corp.*, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005)). The present application discloses two modules that are separate such that they are not connected in any

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way. Therefore, “separate” as used in the claims requires that the two modules not be connected, either directly or indirectly. Third, contrary to the Examiner’s Answer, the claims state that the at least two modules are not connected directly or indirectly when they call for “at least two separate modules [that] will easily separate upon removal of the cover from over the at least two separate modules.” If the modules were connected (as the Examiner admits is the case in all of the references used to reject these claims), any modules would not easily separate upon removal of the cover from over the at least two separate modules. The remaining remarks in the Examiner’s Answer are only applicable if the units 50 and 60 of the Douglas ‘048 patent are separate as defined in the present application, which they clearly are not as discussed above. If they are not separate, any connection of “paired units” (i.e., the non-separate units 50 and 60 connected to another assembly of non-separate units 50 and 60) would not include the features of claim 1 (as any connection of paired units would not have a pocket on one paired unit between pockets of another paired unit).

In response to the Examiner’s Answer statement that “applicant’s interpretation on lines 48-63 [of column 1 of the Douglas ‘084 patent] is incorrect,” Applicant notes that the Examiner’s Answer has not refuted Applicant’s interpretation that the Douglas ‘048 patent teaches away from any combination where the units 50 and 60 or the units 80 and 90 are separate. Any reference to uncoupling the units in the Douglas ‘048 patent refers to unfolding the two units, but not disconnecting the units.

Finally, the cover 10 or cover 70 allow the modules to be removed from within the cover. While the Examiner’s Answer refers to lines 57 of column 1 to lines 16 of column 2 of the Douglas ‘048 patent, only lines 5-16 of column 2 refer to the cover 10 and 70 of the Douglas ‘048 patent (which is used in the rejection of the claims). Furthermore, as stated in the Appeal Brief, this section only refers to an object having a side surface open for removal of the units. As set forth in the 35 U.S.C. §112, first paragraph, rejection in the Office Action, having one side surface for removal of a unit does not comprise a situation where none of the units are able to be removed from within the cover while the cover is over all of the units. Accordingly, the Office Action implicitly admits that the covers 10 and 70 of the Douglas ‘084 patent could not read on claim 1. If the Examiner is using another item or element of the

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Douglas '048 patent as the cover in the combination of the references to reject claim 1, Applicant submits that the Examiner has not made a *prima facie* rejection of claim 1 as it is not therefore clear what exactly the proposed modification of the references is to reject claim 1.

ii. The Casanova '017 publication in view of the Källgren '920 patent

In regard to this rejection, Applicant once again notes that the Källgren '920 patent does not include any elements that are separate, much less two separate modules and directs the Board to the discussion of the term “separate” as discussed above.

iii. The Casanova '017 publication in view of the Douglas '084 patent and the Källgren '920 patent

Finally, a combination of all three of the references include all of the deficiencies as outlined above.

iv. Conclusion

Accordingly, claim 1 is in condition for allowance. Furthermore, claims 13, 14 and 20 depend from claim 1, and since claim 1 defines unobvious patentable subject matter as discussed above, claims 13, 14 and 20 define patentable subject matter.

2. Claim 3

As stated in the Appeal Brief, while the Final Office Action states that the Casanova '017 publication includes a transparent lid 36 and a card 14, it does not appear that either of these elements will be included in the combination as set forth in the Office Action. However, according to the Examiner's Answer, it appears that these elements are part of the combination of the references to reject claims 1 and 3. Hence, it appears that the rejection of claim 1 is to include all of the elements of the Casanova '017 publication. Therefore, the modification of the references appears to be to take the battery package of the Casanova '017 publication, spread the batteries 22 out such that they are further spaced from each other such that another battery of another package can be placed between the now spaced out batteries 22, add more

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material to cover the batteries 22 (as the blister container 30 would need to be enlarged to cover the separated batteries 22), and add another package to the first package in order to avoid bulkiness and to have a minimum amount of space. However, Applicant submits that it clearly is not obvious to make any such combination. Moreover, if another combination of the references is being made to reject claims 1 and 3, Applicant submits that there is not a *prima facie* rejection of claims 1 and 3 as the Office Action and Examiner's Answer has not set forth how the references are modified and/or combined. Additionally, it does not appear that any such additional modification or combination would include any elements 36 and 14 of the Casanova '017 publication. Accordingly, claim 3 is in condition for allowance.

3. Claim 4

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 4 are incorporated herein in their entirety along with the comments made above in regard to claim 3 (from which claim 4 depends).

4. Claim 6

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 6 are incorporated herein in their entirety along with the comments made above in regard to claim 3 (from which claim 6 depends).

5. Claim 7

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 7 are incorporated herein in their entirety along with the comments made above in regard to claim 3.

6. Claim 8

The rejection of claim 8 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 8 are incorporated herein in their entirety.

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7. Claim 9

The rejection of claim 9 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 8 are incorporated herein in their entirety.

8. Claim 10

Claim 10 depends from claim 1 and states that the modules are identical. However, the units having elongated articles in Fig. 6 of the Douglas '048 patent have different numbers of blisters. While the Examiner's Answer refers to FIG. 2 of the Douglas '048 patent, Applicant is unsure of why disc shaped objects (as those shown in FIG. 2) would be used in a combination instead of cylindrical shaped objects (as those shown in FIG. 6), as batteries are cylindrical and the Casanova '017 publication is a battery package. Nevertheless, the rejection of claim 10 once again illustrates that the Final Office Action and the Examiner's Answer has not set forth a *prima facie* rejection of the claims as the Final Office Action and the Examiner's Answer has not clearly set forth the proposed modification of the applied references necessary to arrive at the claimed subject matter as required by MPEP §706.02(j). Finally, as to the statement in the Examiner's Answer that lines 50-67 of column 1 and lines 1-3 of column 2 of the Källgren '920 patent are only referring to packages that do not overlap, Applicant notes that the packs would only have to be offset if they did overlap. Therefore, the portions cited in the Källgren '920 patent illustrating that the rejection of claim 10 is improper is clearly relevant. Therefore, claim 10 is in condition for allowance.

9. Claim 11

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 4 are incorporated herein in their entirety along with the comments made above in regard to claim 3 (from which claim 4 depends).

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10'. Claim 22

As discussed above, claim 22 has been newly rejected in the Examiner's Answer. However, claim 22 is in condition for allowance for the same reasons that claim 1 is in condition for allowance as discussed above.

10. Claim 23

Claim 23 depends from claim 22 and further includes placing a lid over a second face of a base of each module. First, claim 23 depends from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claim 23 defines patentable subject matter. Second, claim 23 is in condition for allowance for the same reasons set forth above in regard to claim 3. Accordingly, claim 23 is in condition for allowance.

11. Claim 24

Claim 24 depends from claim 23 and further states that the lid is transparent. First, claim 24 depends from claims 22 and 23, and since claims 22 and 23 define unobvious patentable subject matter as discussed above, claim 24 defines patentable subject matter. Second, claim 24 is in condition for allowance for the same reasons set forth above in regard to claim 4. Accordingly, claim 24 is in condition for allowance.

12. Claim 26

Claim 26 depends from claim 23 and includes positioning a card over the lid and the second face of each module. First, claim 26 depends from claims 22 and 23, and since claims 22 and 23 define unobvious patentable subject matter as discussed above, claim 26 defines patentable subject matter. Second, claim 26 is in condition for allowance for the same reasons set forth above in regard to claim 6. Accordingly, claim 26 is in condition for allowance.

13. Claim 27

Claim 27 depends from claim 22 and includes a card positioned over the second face of each module. First, claim 27 depends from claim 22, and since claim 22 defines unobvious

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patentable subject matter as discussed above, claim 27 defines patentable subject matter.

Second, claim 27 is in condition for allowance for the same reasons set forth above in regard to claim 7. Accordingly, claim 27 is in condition for allowance.

14. Claim 28

Claim 28 depends from claim 22 and further includes providing each pocket with a non-rotation feature and maintaining batteries in place in the pockets in a selected rotated position.

First, claim 28 depends from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claim 28 defines patentable subject matter. Second, claim 28 is in condition for allowance for the same reasons set forth above in regard to claim 8.

Accordingly, claim 28 is in condition for allowance.

15. Claim 29

Claim 29 depends from claim 28 and defines the non-rotation feature as comprising at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. First, claim 29 depends from claims 22 and 28, and since claims 22 and 28 define unobvious patentable subject matter as discussed above, claim 29 defines patentable subject matter. Second, claim 29 is in condition for allowance for the same reasons set forth above in regard to claim 9. Accordingly, claim 29 is in condition for allowance.

16. Claim 30

Claim 30 depends from claim 22 and states that each of the modules are identical. First, claim 30 depends from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claim 30 defines patentable subject matter. Second, claim 30 is in condition for allowance for the same reasons set forth above in regard to claim 10. Accordingly, claim 30 is in condition for allowance.

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17. Claim 31

Claim 31 depends from claim 22 and states that each module includes only four pockets. First, claim 31 depends from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claim 31 defines patentable subject matter. Second, claim 31 is in condition for allowance for the same reasons set forth above in regard to claim 11. Accordingly, claim 31 is in condition for allowance.

18. Claims 33, 34 and 40

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claims 33, 34 and 40 are incorporated herein in their entirety. Furthermore, claim 40 states that each module includes the pockets in a single row. In the rejection of claim 22, the Examiner's Answer refers to FIG. 2 of the Douglas '084 patent, which does not include pockets in a single row. Therefore, any combination of the references with the Douglas '084 patent would not include pockets in a single row as claimed in claim 40 (or, at a minimum, would not include the features of claims 10, 11, 30 and 31, which have identical modules). Accordingly, claims 33, 34 and 40 are in condition for allowance.

E. Rejection of Claims 2, 12 and 32 under 35 U.S.C. §103(a) as Being Obvious Over “the references applied above with respect to claims 1 and 22” further in view of Official Notice

1. Claim 2

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 2 are incorporated herein in their entirety.

2. Claim 12

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 12 are incorporated herein in their entirety, along with the arguments provided herein in regard to the allowability of claims 10 and 11.

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3. Claim 32

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 32 are incorporated herein in their entirety, along with the arguments provided herein in regard to the allowability of claims 30 and 31.

F. Rejection of Claims 1, 3-5, 10, 11, 13, 14, 19, 20, 22-25, 30, 31, 33, 34, 39 and 40 under 35 U.S.C. §103(a) as Being Obvious Over U.S. Design Patent No. D479,126 to Kumakura et al. in view of the Douglas '084 patent and/or the Källgren '920 patent.

1. Claims 1, 3, 5, 13, 14, 19 and 20

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claims 1, 3, 5, 13, 14, 19 and 20 are incorporated herein in their entirety. Furthermore, the arguments provided above in regard to the impropriety of combining the Douglas '084 patents and/or the Källgren '920 patent with any battery package (whether the battery package of the Casanova '017 publication or the battery package of the Kumakura et al. '126 patent) are also incorporated herein. Notably, Applicants submit that the Examiner's Answer has not made a *prima facie* rejection of the claims as the Final Office Action and the Examiner's Answer have not clearly set forth the proposed modification of the applied references necessary to arrive at the claimed subject matter as required by MPEP §706.02(j). Furthermore, Applicant submits that it is not obvious to take the battery package of the Kumakura et al. '126 patent, spread the batteries out such that they are further spaced from each other such that another battery of another package can be placed between the now spaced out batteries, add more material to cover the batteries (as the blister container would need to be enlarged to cover the separated batteries), and add another package to the first package because in order to avoid bulkiness and to have a minimum amount of space. Applicant submits that spacing things out and adding more material (and thereby costs) does not avoid bulkiness or result in a minimum amount of space. Accordingly, Applicant submits that it is not obvious to combine any reference with the Kumakura et al. '126 patent to result in the presently claimed invention.

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Moreover, Applicant submits that the Kumakura et al. '126 patent does not include at least two modules, much less at least two separate modules. Therefore, any combination of the Kumakura et al. '126 patent with the Douglas '084 patent and/or the Källgren '920 patent would not include two separate modules as discussed above in regard to claim 1 (as none of the references have at least two separate modules).

Accordingly, claims 1, 3, 5, 13, 14, 19 and 20 are in condition for allowance.

2. Claim 4

The previous rejection of claim 4 has been implicitly withdrawn as a new rejection of claim 4 is presented for the first time in the Examiner's Answer. Claim 4 depends from claim 3 and further states that the lid is transparent. First, claim 4 depends from claims 1 and 3, and since claims 1 and 3 define unobvious patentable subject matter as discussed above, claim 4 defines patentable subject matter. Second, each of the combinations to reject claim 4 would not include any transparent lid. As implicitly admitted, the Kumakura et al. '126 patent does not disclose any transparent lid. According to the Examiner's Answer, "it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." However, in order to make a rejection over a prior holding, the Examiner is required to compare the facts in the present case to those in the cited case and explain why, based upon this comparison, the legal conclusion in the present case should be the same as that in the cited case as required by MPEP §2144. No such comparison has been made. Instead, the Examiner has relied on a *per se* rule that "it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." However, it is clear that "reliance on *per se* rules of obviousness is legally incorrect and must cease." *In re Ochiai*, 37 U.S.P.Q.2d 1127, 1133 (Fed. Cir. 1995). Accordingly, claim 4 is in condition for allowance.

3. Claim 10

Claim 10 depends from claim 1 and states that each of the modules are identical. First,

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claim 10 depends from claim 1, and since claim 1 defines unobvious patentable subject matter as discussed above, claim 10 defines patentable subject matter. Second, claim 10 is in condition for allowance for the same reasons set forth above in regard to the discussion of allowability of claim 10 above. Accordingly, claim 10 is in condition for allowance.

4. Claim 11

Claim 11 depends from claim 1 and states that each module includes only four pockets. First, claim 11 depends from claim 1, and since claim 1 defines unobvious patentable subject matter as discussed above, claim 11 defines patentable subject matter. Second, claim 11 is in condition for allowance for the same reasons set forth above in regard to the discussion of allowability of claim 11 above. Accordingly, claim 11 is in condition for allowance.

5. Claims 22, 23, 25, 33, 34, 39 and 40

Applicant submits that claim 22 is in condition for allowance for the same reason that claim 1 is in condition for allowance as discussed above. Accordingly, claim 22 is in condition for allowance. Furthermore, claims 23, 25, 33, 34, 39 and 40 depend from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claims 23, 25, 33, 34, 39 and 40 define patentable subject matter.

6. Claim 24

Claim 24 depends from claim 23 and further states that the lid is transparent. First, claim 24 depends from claims 22 and 23, and since claims 22 and 23 define unobvious patentable subject matter as discussed above, claim 24 defines patentable subject matter. Second, claim 24 is in condition for allowance for the same reasons set forth above in regard to claim 4 above. Accordingly, claim 24 is in condition for allowance.

3. Claim 30

Claim 30 depends from claim 22 and states that each of the modules are identical. First, claim 30 depends from claim 22, and since claim 22 defines unobvious patentable subject

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matter as discussed above, claim 30 defines patentable subject matter. Second, claim 30 is in condition for allowance for the same reasons set forth above in regard to claim 10 above. Accordingly, claim 30 is in condition for allowance.

4. Claim 31

Claim 31 depends from claim 22 and states that each module includes only four pockets. First, claim 31 depends from claim 22, and since claim 22 defines unobvious patentable subject matter as discussed above, claim 31 defines patentable subject matter. Second, claim 31 is in condition for allowance for the same reasons set forth above in regard to claim 11 above. Accordingly, claim 31 is in condition for allowance.

G. Rejection of Claims 2, 12 and 32 under 35 U.S.C. §103(a) as Being Obvious Over “the references applied above with respect to claims 1 and 22” further in view of Official Notice

1. Claim 2

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 2 are incorporated herein in their entirety.

2. Claim 12

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 12 are incorporated herein in their entirety, along with the arguments provided herein in regard to the allowability of claims 10 and 11.

3. Claim 32

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 32 are incorporated herein in their entirety, along with the arguments provided herein in regard to the allowability of claims 30 and 31.

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H. Rejection of Claims 6-9 and 26-29 under 35 U.S.C. §103(a) as Being Obvious Over “the references applied above with respect to claims 1 and 22, respectively, further in view of Casanova WO 01/98170 A2”

1. Claim 6

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 6 are incorporated herein in their entirety.

2. Claim 7

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 7 are incorporated herein in their entirety.

3. Claim 8

The rejection of claim 8 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 8 are incorporated herein in their entirety.

4. Claim 9

The rejection of claim 9 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 9 are incorporated herein in their entirety.

5. Claim 26

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 26 are incorporated herein in their entirety.

6. Claim 27

The Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 27 are incorporated herein in their entirety.

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7. Claim 28

The rejection of claim 28 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 28 are incorporated herein in their entirety.

8. Claim 29

The rejection of claim 29 is a new rejection and should have been properly called out as such. Nevertheless, the Applicant's Appeal Brief stands, and the arguments relative to the patentability of claim 29 are incorporated herein in their entirety.

I. Rejection of Claims 21 and 41 under 35 U.S.C. §103(a) as Being Obvious Over PCT Publication WO 01/98171 to Miller in view of the Källgren '920 patent, the Getz et al. '358 patent and the Douglas '048 patent

Applicant is not able to respond to the rejection of claims 21 and 41 fully as the combination of the references is unclear from the record at this point. Accordingly, Applicant submits that the examiner has not made a *prima facie* rejection of claims 21 and 41. Nevertheless, the references used to reject claims 21 and 41 do not include any separate modules. Furthermore, Applicant's Appeal Brief stands, and the arguments relative to the patentability of claims 21 and 41 are incorporated herein in their entirety. Accordingly, claims 21 and 41 are in condition for allowance.

J. Rejection of Claims 21 and 41 under 35 U.S.C. §103(a) as Being Obvious Over the Kumakura et al. '126 patent in view of the Källgren '920 patent, the Getz et al. '358 patent and the Douglas '048 patent

Applicant is not able to respond to the rejection of claims 21 and 41 fully as the combination of the references is unclear from the record at this point. Accordingly, Applicant submits that the examiner has not made a *prima facie* rejection of claims 21 and 41. Nevertheless, the references used to reject claims 21 and 41 do not include any separate modules. Furthermore, Applicant's Appeal Brief stands, and the arguments relative to the

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patentability of claims 21 and 41 are incorporated herein in their entirety. Accordingly, claims 21 and 41 are in condition for allowance.


VIII. Conclusion

Each claim is definite and recites features that are not disclosed in any of the cited references and it would not have been obvious to modify the cited references to include the recited features of the appealed claims. The reference upon which the Examiner relies in the Examiner's rejection of the claims does not disclose or make obvious a package or a method as claimed. Applicant's invention resolves problems and inconveniences experienced in the prior art, and therefore represents a significant advancement in the art. Applicant earnestly requests that the Examiner's rejection of claims 1-41 be reversed, and that the application be passed to allowance forthwith.

Respectfully submitted,

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Date



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